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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON
VETERANS' BENEFITS

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Mr. Chairman and Members of the Committee:

The American Legion appreciates the opportunity to provide testimony on the key veterans' legislation being considered by this Subcommittee. The American Legion continues to be deeply concerned about the future of veterans' earned entitlements and greatly appreciates the leadership of this Committee in addressing these important issues.

H.R. 862 - would amend title 38, United States Code, to add diabetes mellitus to the list of disabilities for which presumptive service connection may be granted in the case of veterans who served in the Republic of Vietnam during the Vietnam Era.

In 2000, the Department of Veterans Affairs (VA) requested the Institute of Medicine (IOM) of the National Academy of Science to review the scientific literature to determine whether there was a relationship between dioxin exposure and an increased incidence of Type 2 (adult-onset) diabetes. The IOM found "limited suggestive evidence" of a link between such herbicide exposure and Type 2 diabetes. The Department of Veterans Affairs subsequently promulgated regulations providing for presumptive service connection in claims by veterans who served in the Republic of Vietnam during the Vietnam Era. These regulations became effective yesterday, July 9, 2001.

Mr. Chairman, The American Legion commends VA for its positive response to the needs of thousands of veterans who served in Vietnam and who are now suffering from diabetes. VA had originally estimated about 25,000 claims would be filed in the current fiscal year. However, they have already received 31,000 claims. VA estimates a total of 220,000 diabetes claims will be filed over the next five years. Clearly, this new workload will have a significant, long-term impact on both mandatory and discretionary funding in FY 2002 and beyond for the Veterans Benefits Administration as well as the Veterans Health Administration.

The fact that VA has regulations in place, which allow veterans with this disability to be compensated raises the question – is legislative action really necessary? We believe it is. In our view, the interests of veterans seeking service connection for diabetes based on exposure to Agent Orange will be better served by having the presumption established by statute rather than by regulation. While the current administration is supportive of this regulatory change, there is nothing to prevent a future administration from arbitrarily issuing regulations restricting or eliminating such claims or benefits. By way of contrast, the public nature of the legislative process makes it more difficult for any administration to make arbitrary or drastic changes in the veterans' benefit programs. The American Legion supports H.R. 862.

H.R. 1406 – The Gulf War Undiagnosed Illness Act, would improve presumptive compensation benefits for veterans with ill-defined illnesses resulting from service in the Persian Gulf War.

Shortly after returning home from the 1991 Gulf War, thousands of Gulf War veterans began complaining of unexplained multiple symptom illnesses that eluded

diagnosis or clear definition. At the time, VA was precluded from compensating veterans for disabilities related to service unless the claimed condition had been clearly diagnosed. Aware that thousands of disabled Gulf War veterans were ineligible for disability compensation because Gulf War veterans' illnesses remained ill defined and poorly understood, Congress developed legislation that would permit VA to compensate these veterans. In 1994, hallmark legislation in the form of PL 103-446 was enacted to ensure compensation for ill Gulf War veterans suffering from unexplained conditions commonly referred to as Gulf War veterans' illness. Yet most Gulf War veterans who have filed a claim for undiagnosed illness compensation have been denied service connection for those conditions. PL 103-446 looked good on paper, but a dismal seventy-five percent denial rate is the current reality for sick Gulf War veterans trying to receive VA service connection for Gulf War-related undiagnosed illness.

Although the final product contained ambiguities in the language that permitted VA to write regulations (38 C.F.R. § 3.317) narrowly interpreting section 1117 of Title 38, floor statements and hearing transcripts from the period during which PL 103-446 was crafted make it clear that Congress intended for VA to compensate Gulf War veterans suffering from disabilities that were likely related to their Gulf War service, regardless of how these illnesses would be labeled by a physician. The original intent of Congress and the spirit of the law were also addressed in a June 3, 1998, letter from House Veterans' Affairs Committee Chairman Bob Stump to Department of Veterans Affairs Secretary Togo D. West. VA's response in the form of General Counsel Opinions and Congressional testimony make it quite clear that it will take legislative action to correct the deficiencies and injustice caused by the vagueness of PL 103-446.

Conditions that fall under the umbrella of Gulf War veterans' illnesses share many symptoms and can be labeled several different ways by physicians. Among the common labels are chronic fatigue syndrome (CFS) and fibromyalgia (FM). Although technically diagnosed, such conditions are not well understood by the medical community and are considered poorly defined because their exact causes remain unknown. Moreover, researchers investigating Gulf War veterans' illnesses recognize that the pattern of symptoms reported by Gulf War veterans overlap with recognized but poorly defined illnesses such as FM and CFS (this point was further discussed and supported earlier this year at a government sponsored Gulf War veterans' illness research conference held in Alexandria, Virginia). Despite this, a veteran with such a diagnosis will be denied compensation under the current undiagnosed illness law.

It must also be kept in mind that physicians undergo years of rigorous training in order to diagnose and treat illness. Yet VA compensates veterans who are examined by physicians who are unable to diagnose their illness. As a result, many disabled Gulf War veterans are left in a very precarious situation. If their examining physician diagnoses their illness, they are ineligible for compensation. If the physician does not diagnose their illness, the veteran becomes eligible for compensation. This scenario would be comical if it did not result in the continued suffering of ill Gulf War veterans. Additionally, there is a growing body of evidence found in the medical literature which suggests that the symptoms of CFS and FM so overlap with each other that these illnesses are sometimes indistinguishable to physicians. CFS and FM are often diagnoses that physicians arrive at after they have excluded other diseases. Patients with these illnesses do not test positive on any available medical tests. For example, one does not test positive for fatigue on a blood test. Although a physician may diagnose these illnesses after spending a great deal of time with a patient, the very nature of such conditions often results in different examining physicians of the same patient diagnosing one or the other, or even none, of these illnesses in the same patient.

As you can see Mr. Chairman, there are many uncertainties and unanswered questions that encompass the multiple unexplained physical symptoms experienced by many Gulf War veterans. To date, research into the possible causes and long-term health effects from the multitude of toxic agents and other hazards Gulf War veterans were exposed to during the war, has been mostly inconclusive. Uncertainty and confusion have also plagued effective treatment and definitive diagnosis, hindering a proper treatment regimen and also, often times, adversely impacting the veteran's undiagnosed illness claim, precluding the veteran from rightfully deserved compensation. This is why

it is imperative that the law allowing compensation for such illnesses recognize the uncertainties and limitations in Gulf War research and treatment in order to establish a fair and just means of compensation for ill Gulf War veterans.

Clarifying the definition of "undiagnosed," for VA purposes under the law, to include poorly defined conditions such as CFS, FM and other such conditions is necessary in order to recognize both the original intent of Congress and the complexities involved with Gulf War-related research and treatment. Doing so would serve to correct the deficiencies in the current law and help to ensure that ill Gulf War veterans receive the compensation to which they are entitled.

The American Legion believes H.R. 1406 will help to more clearly define the definition of undiagnosed illness and to improve the claims process for sick Gulf War veterans. Additionally, The American Legion commends Rep. Evans for including language in H.R. 1406 that would prevent medical information derived from participation in a research project from being used in adjudicating a Persian Gulf veterans' entitlement.

Although The American Legion supports H.R. 1406, we ask the members of this Subcommittee to consider language that will extend the presumptive period for undiagnosed illnesses. The current presumptive period for undiagnosed illness claims is set to expire at the end of this year. However, Gulf War-related research to date, as highlighted by a September 2000 Institute of Medicine (IOM) report on the long-term health effects of exposures during the Gulf War, has been inconclusive. Research is ongoing and IOM is scheduled to release several additional reports on long-term health effects in the future. Therefore, due to the inconclusive nature of Gulf War research and the resulting uncertainties, it would be unconscionable to allow the presumptive period to expire at the end the year. The nature of Gulf War veterans' illnesses and limitations and problems with Gulf War research, as cited by IOM, warrant, at the very least, a ten year extension of the presumptive period.

Rep. Donald Manzullo along with Rep. Elton Gallegly and Rep. Ronnie Shows, has introduced H.R. 612, the Persian Gulf War Illness Compensation Act. In addition to clarifying the definition of undiagnosed illnesses considered under Persian Gulf war illness, H.R. 612 will extend the presumptive period through December 31, 2011. The American Legion supports both H.R. 1406 and H.R. 612.

H.R. 1435 – The Veterans' Emergency Telephone Service Act, would authorize the Secretary of Veterans Affairs to award grants of $2 million for FY 2002 and FY 2003 for the establishment of a national toll-free hotline to provide information and assistance to veterans. The grant, provided to a private, nonprofit entity, would require the grantee to provide general and specific information and assistance to veterans and their families on benefits available under title 38, United States Code, and referrals to appropriate individuals with such expertise. This would include information with respect to the provision of emergency shelter and food, substance abuse rehabilitation, employment and training, small business assistance programs, and other information.

H.R. 1746 – would amend title 38, United States Code, to require VA to establish a single "1-800" telephone number in order to provide public access to veterans' benefits counselors and to ensure that such counselors have available to them information on all Federal and state benefit programs.

Currently, title 38, United States Code, section 7723(b) requires that VA shall establish and carry out all possible programs and services, including special telephone facilities, as may be necessary to make the outreach services provided for under this subchapter as widely available as possible. VA has, in fact, established 1-800-827-1000 as a national toll-free phone number, which provides both general information on veterans' benefits as well as access to veterans' benefit counselors for assistance in individual cases. There are also other VA toll-free phone numbers that provide information and assistance on health care benefits, education, life insurance, debt management, a mammography hotline, CHAMPVA, headstones and grave markers, and a Persian Gulf War and Agent Orange hotline.

Many veterans today also have access to the Internet. VA's Home Page allows a veteran or family member to obtain a wealth of information related to VA programs and services and general benefit information. Individual Veterans Integrated Service Networks (VISNs) and VA medical centers also operate home pages via the Internet. Again, general and specific veterans' benefits information and program service information is available on-line. Veterans and their families are also able to contact veterans' service organizations (VSOs) via the Internet. For those individuals who do not have access to the Internet, improving the conventional methods of disseminating information may be less costly and just as effective as creating a new Federal program.

In the view of The American Legion, HR 1435 would essentially duplicate VA's current toll-free outreach services. Rather than try and establish a new, expensive, private information and assistance phone system, The American Legion suggests that the existing VA system be expanded and improved, as a first-step toward assuring that veterans and their families are able to access all necessary benefits information and program referral information. With respect to HR 1746, we believe the current VA toll-free numbers are an effective means of providing veterans needed benefit information and assistance. Granted, this system has its limitations and problems, however, these can be remedied. While the goal of these legislative initiatives is commendable, there is no assurance that either would result in significantly improved services.

H.R. 1929 – would amend section 3761 of title 38, United States Code, to extend the Native American veterans housing loan program, which currently terminates on December 31, 2001. The purpose of such loans is to permit Native American veterans who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances to purchase, construct, or improve dwellings on trust land.

The American Legion recognizes the sacrifices made by Native American veterans and has no objection to extending or even making permanent the Native American housing loan program. In testimony submitted to the Senate Veterans' Affairs Committee on June 28, 2001, The American Legion expressed support for S. 228, which would make the Native American veterans housing loan program permanent. Every man and women who has worn the uniform in honorable service to this country deserves the rights afforded them through that service.

H.R. 2359 – would amend title 38, United States Code, to authorize the payment of National Service Life Insurance and United States Government Life Insurance proceeds to an alternate beneficiary when the first beneficiary cannot be identified, to improve and extend the Native American veterans housing loan pilot program, and to eliminate the requirement to provide the Secretary of Veterans Affairs a copy of a notice of appeal to the Court of Appeals for Veterans Claims.

Section 1 of this legislation provides for the payment of insurance proceeds to an alternate beneficiary, when the first beneficiary of record cannot be identified. If the first beneficiary does not make a claim for the insurance proceeds within two years of the death of the insured, the proceeds may be paid to another beneficiary designated by the insured. If no claim is made by any designated beneficiary within four years of the death of the insured, VA may determine who is equitably entitled to the insurance proceeds and payment will be made to that individual. The American Legion has no objection to this proposal.

Section 2 would extend the Native American veteran housing loan program through 2005. It would also authorize the use of certain Federal memorandums of understanding with respect to direct home loans to Native Americans, and require the inclusion of a notice on the loan or deed documents that such loans are not assumable without the approval of the Department of Veterans Affairs. As stated previously, The American Legion supports the extension of the Native American veteran housing loan program and we support the provisions contained in H.R. 2359, which seek to improve and extend the Native American veterans housing loan program.

Section 3 would amend title 38, United States Code, section 7266, to eliminate the requirement that the veteran provide notification to the Department of Veterans Affairs,

when a notice of appeal is filed with the United States Court of Appeals for Veterans Claims.

Currently, when the Board of Veterans Appeals issues a final decision, it provides instructions to the appellant on how to seek further action on their claim by VA as well as their right of appeal to the United States Court of Appeals for Veterans Claims (the Court) and the procedure for such appeals. Appellants are also advised that a copy of their Notice of Appeal must be mailed to the VA General Counsel. In a number of instances, appellants have mistakenly sent their Notices of Appeal to the VA instead of the Court, which delayed their receipt by the Court and caused them to be denied as not timely filed. While the Board's instructions may appear to be clear and simple to most people, unintended problems do exist.

The requirement that the appellant "shall" provide the VA with a copy of their Notice of Appeal in title 38, United States Code, section 7266(b) is mitigated by the provision in that same section that "a failure to do so shall not constitute a failure of timely compliance with subsection (a) of this section." If the appellant has filed a timely Notice of Appeal, he or she does not necessarily have to provide VA with a copy of their notice, in order to complete the Court's appeal process.

In our view, the proposed elimination of the requirement for an appellant to notify VA of the filing of a Notice of Appeal would make the Court's appeal procedures less confusing and burdensome for appellants. This would not alter the Court's current administrative procedure whereby VA receives formal notification of all Notices of Appeals received by the Court. The American Legion, therefore, is not opposed to this proposal.

H.R. 2361 – The Veterans' Compensation Cost-of-Living Adjustment Act would increase the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for survivors of certain service-connected disabled veterans. The percentage of increase in these benefits would be the same as the COLA authorized for beneficiaries under Social Security and would be effective December 1, 2001. The President's proposed budget for the Department of Veterans Affairs for FY 2002 included a cost-of-living adjustment of 2.5 percent, based on the projected increase in the consumer price index.

The American Legion supports the proposal to provide an appropriate COLA for veterans receiving disability compensation and individuals in receipt of DIC benefits. We believe it is important that this Committee take the required action to ensure the continued welfare and wellbeing of disabled veterans and their families by enacting periodic adjustments in their benefits, which reflect the increased cost-of-living. The American Legion also believes that annual congressional hearings on such legislation provide an important forum to discuss issues of concern relating to the compensation and DIC programs, which might not otherwise be available.

Mr. Chairman, that completes my testimony. Again, I thank you for allowing The American Legion to provide comments on these important issues. The American Legion looks forward to working with the members of this Committee to improve the lives of all of America's veterans.